



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2018-0637; FRL-9992-50-Region 1]

Air Plan Approval; Maine; Infrastructure State Implementation

Plan Requirements for the 2010 Sulfur Dioxide NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision addresses the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). The EPA is conditionally approving the SIP revision for infrastructure requirements related to State Boards and Conflicts of Interest. The intended effect of this action is to approve the infrastructure requirements of Maine's air quality management program with respect to this NAAQS into the Maine SIP. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2018-0637. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at

<https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. The EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail Code OEP05-2), Boston, MA 02109 - 3912, tel. (617) 918-1657, email dahl.donald@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

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I. Background and Purpose

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2010 SO₂ NAAQS. On April 19, 2017, the Maine Department of Environmental Protection (ME DEP) submitted to the EPA an infrastructure SIP revision for the 2010 SO₂ NAAQS, including an enclosure to address the “Good Neighbor” (or “transport”) provisions of the Act. *See* CAA section 110(a)(2)(D)(i)(I). On December 26, 2018 (83 FR

66184), the EPA published a Notice of Proposed Rulemaking (NPRM), in which the EPA proposed full approval of all elements of Maine's infrastructure SIP revision for the 2010 SO₂ NAAQS, except for certain requirements of CAA section 110(a)(2)(E) regarding State Boards and Conflicts of Interest, which we proposed to conditionally approve. The NPRM includes the rationale for our full approval and conditional approval, respectively, and the EPA will not restate our rationale in this action.

This rulemaking does not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (SSM) at sources that may be contrary to the CAA and the EPA's policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by the EPA, that may be contrary to the CAA; and, (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of the EPA's "Final New Source Review (NSR) Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007). Instead, the EPA has the authority to address each of these substantive areas separately. A detailed history, interpretation, and rationale for the EPA's approach to infrastructure SIP requirements can be found in the EPA's May 13, 2014, proposed rule entitled, "Infrastructure SIP Requirements for the 2008 Lead NAAQS" in the section, "What is the scope of this rulemaking?" *See* 79 FR 27241 at 27242–45.

II. Response to Comments

The EPA did not receive any comments on the NPRM.

III. Final Action

The EPA is fully approving Maine's infrastructure SIP submission for the 2010 SO₂ NAAQS as a revision to the Maine SIP, except with respect to CAA section 110(a)(2)(E)(ii) regarding State Boards and Conflicts of Interest, which we are conditionally approving.

The outstanding issues that are being conditionally approved in this action concern State provisions governing the membership of Maine's Board of Environmental Protection and conflict of interest requirements pertaining to the Commissioner of ME DEP, as described in detail in our NPRM for this action. *See* 83 FR 66184 (December 26, 2018). Maine must provide to the EPA by June 18, 2019, a submittal(s) addressing these issues. If Maine fails to do so, the conditional approval of CAA section 110(a)(2)(E)(ii) regarding State Boards and Conflicts of Interest, will become a disapproval on that date. The EPA will notify ME DEP by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Maine SIP. The EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until the EPA takes final action approving or disapproving the new submittal. If the EPA disapproves the new submittal, the conditionally approved aspects will also be disapproved at that time. If the EPA approves the submittal, then the portions of Maine's infrastructure SIP submittals that were conditionally approved will be fully approved in their entirety and replace the conditional approval in the SIP. In addition, final disapproval of an infrastructure SIP submittal triggers the Federal Implementation Plan (FIP) requirement under section 110(c).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of

judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 24, 2019.

Deborah Szaro,
Acting Regional Administrator,
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart U—Maine

2. Amend § 52.1019 by adding paragraph (g) to read as follows:

§ 52.1019 Identification of plan—conditional approval.

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(g) 2010 Sulfur Dioxide National Ambient Air Quality Standards (NAAQS): The 110(a)(2) infrastructure SIP submitted on April 19, 2017, is conditionally approved for Clean Air Act section 110(a)(2)(E) regarding State Boards and Conflicts of Interest. On March 1, 2018, the State of Maine committed to address these requirements.

3. In § 52.1020(e), amend the table by adding the entry “Submittal to meet Clean Air Act Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standards” to the end of the table to read as follows:

§ 52.1020 Identification of plan.

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(e) * * *

MAINE NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date ³	Explanations
**	*	*	*	**

Submittal to meet Clean Air Act Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide (SO ₂) National Ambient Air Quality Standards.	State of Maine	4/19/2017	<p><u>[Insert date of publication in the Federal Register]</u></p> <p><u>[Insert Federal Register citation]</u></p>	<p>This submittal is approved with respect to the following CAA elements or portions thereof:</p> <p>110(a)(2)(A), (B), (C), (D), (E)(i), (F), (G), (H), (J), (K), (L), and (M), and conditionally approved with respect to E(ii) regarding State Boards and Conflicts of Interest.</p>
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³ In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2019-08650 Filed: 4/29/2019 8:45 am; Publication Date: 4/30/2019]